

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN A. ALTROGGE and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

*Docket No. 99-921; Submitted on the Record;
Issued May 22, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained intermittent periods of disability from March 18 through September 10, 1996 causally related to her February 2, 1996 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

Regarding the issue of whether appellant has established that she sustained intermittent periods of disability from March 18 through September 10, 1996 causally related to her February 2, 1996 employment injury, the Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated February 5, 1998 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,² when the request is made after the 30-day period established for requesting a hearing,³ or when the request is for a second hearing on the same issue.⁴ In these

¹ *Johnny S. Henderson*, 34 ECAB 216 (1982).

² *Rudolph Bermann*, 26 ECAB 354 (1975).

³ *Herbert C. Holley*, 33 ECAB 140 (1981).

instances, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁵

On December 2, 1996 appellant requested a hearing before an Office hearing representative. The hearing was held on December 9, 1997. In a decision dated February 5, 1998, the hearing representative affirmed the Office's November 29, 1996 decision after finding that appellant had not established that she was entitled to wage-loss compensation for intermittent periods of disability from March 18 to September 10, 1996 due to her accepted employment injury. On August 20, 1998 appellant requested a second hearing before an Office hearing representative. By decision dated October 19, 1998, the Office denied appellant's request for a hearing because she was not entitled as a matter of right to a second hearing on the same issue. The Office exercised its discretion in considering appellant's request, noting that it had considered the matter and determined that the issue in the case could be resolved through the reconsideration process. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁶ There is no evidence that the Office abused its discretion in appellant's case.

The decisions of the Office of Workers' Compensation Programs dated October 19 and February 5, 1998 are hereby affirmed.

Dated, Washington, D.C.
May 22, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁴ *Johnny S. Henderson, supra* note 1.

⁵ *Rudolph Bermann, supra* note 2.

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).